

1 Marco Gonzalez (SBN #190832)

2 Livia Borak (SBN #259434)

3 COAST LAW GROUP LLP

4 1140 South Coast Highway 101

5 Encinitas, California 92024

6 Tel: 760.942.8505

7 Fax: 760.942.8515

8 Attorneys for Plaintiff

9 COASTAL ENVIRONMENTAL RIGHTS FOUNDATION

10 **UNITED STATES DISTRICT COURT**
11 **SOUTHERN DISTRICT OF CALIFORNIA**

12 COASTAL ENVIRONMENTAL RIGHTS
13 FOUNDATION, a California non-profit
14 corporation,

15 Plaintiff,

16 vs.

17 ANDY'S AUTO WRECKING, INC., a California
18 corporation, DBA A & B TRUCK RECYCLING,

19 Defendant.

Civil Case No. 3:16-cv-00944-JM-BGS

[PROPOSED] CONSENT DECREE

**(Federal Water Pollution Control Act,
33 U.S.C. § 1251 *et seq.*)**

1 **CONSENT DECREE**

2 The following Consent Decree is entered into by and between Coastal Environmental Rights
3 Foundation ("CERF" or "Plaintiff") and Andy's Auto Wrecking, Inc., doing business as A & B Truck
4 Recycling ("A & B Truck"). The entities entering into this Consent Decree are each an individual
5 "Settling Party" and collectively the "Settling Parties."

6 **WHEREAS**, CERF is a non-profit organization founded by surfers in North San Diego County
7 and active throughout California's coastal communities;

8 **WHEREAS**, CERF was established to aggressively advocate, including through litigation, for
9 the protection and enhancement of coastal natural resources and the quality of life for coastal residents,
10 and one of CERF's primary areas of advocacy is water quality protection and enhancement;

11 **WHEREAS**, A & B Truck is the owner and operator auto salvage and recycling facility located
12 at 2863 Commercial Street, San Diego, California 92113;

13 **WHEREAS**, Plaintiff's members live and/or recreate in and around Chollas Creek, San Diego
14 Bay, and the Pacific Ocean area waters which receive discharges from the A & B Truck Facility;

15 **WHEREAS**, the discharges from the A & B Truck Facility are regulated by the National
16 Pollutant Discharge Elimination System ("NPDES") General Permit No. CAS000001 [State Water
17 Resources Control Board] Water Quality Order No. 92-12-DWQ, as amended by Order No. 97-03-
18 DWQ ("1997 Storm Water Permit"), and as amended by Order No. 2014-0057-DWQ ("2014 Storm
19 Water Permit"), and the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 *et seq.* ("Clean Water
20 Act" or "CWA");

21 **WHEREAS**, on February 24, 2016, Plaintiff sent A & B Truck, the United States
22 Environmental Protection Agency ("EPA"), EPA Region IX, the State Water Resources Control Board
23 ("State Board"), and the San Diego Regional Water Quality Control Board ("Regional Board") a notice
24 of intent to file suit ("Notice Letter") under Sections 505(a) and (b) of the Clean Water Act, 33 U.S.C.
25 §§ 1365(a) and (b). The Notice Letter alleged violations of Section 301(a) of the Clean Water Act, 33
26 U.S.C. § 1311(a), and violations of the Storm Water Permit at the A & B Truck Facility;

27 **WHEREAS**, on _____, Plaintiff filed a complaint against A & B Truck in the United
28 States District Court, Southern District of California (Case No. _____), alleging

1 violations of Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), and violations of the Storm
2 Water Permit at the A & B Truck Facility (“Complaint”);

3 **WHEREAS**, Plaintiff alleges A & B Truck to be in violation of the substantive and procedural
4 requirements of the Storm Water Permit and the Clean Water Act with respect to the A & B Truck
5 Facility;

6 **WHEREAS**, A & B Truck denies all allegations in the Notice Letter and Complaint relating to
7 the A & B Truck Facility;

8 **WHEREAS**, Plaintiff and A & B Truck have agreed that it is in the Settling Parties’ mutual
9 interest to enter into a Consent Decree setting forth terms and conditions appropriate to resolving the
10 allegations set forth in the Complaint without further proceedings;

11 **WHEREAS**, all actions taken by A & B Truck pursuant to this Consent Decree shall be made in
12 compliance with all applicable federal and state laws and local rules and regulations.

13 **NOW THEREFORE IT IS HEREBY STIPULATED BETWEEN THE SETTLING**
14 **PARTIES AND ORDERED AND DECREED BY THE COURT AS FOLLOWS:**

15 1. The Court has jurisdiction over the subject matter of this action pursuant to Section
16 505(a) of the Clean Water Act, 33 U.S.C. § 1365(a);

17 2. Venue is appropriate in the Southern District of California pursuant to Section 505(c)(1)
18 of the Clean Water Act, 33 U.S.C. § 1365(c)(1), because the A & B Truck Facility is located within this
19 District;

20 3. The Complaint states claims upon which relief may be granted pursuant to Section
21 505(a)(1) of the Clean Water Act, 33 U.S.C. § 1365(a)(1);

22 4. Plaintiff has standing to bring this action;

23 5. The Court shall retain jurisdiction over this matter for purposes of enforcing the terms of
24 this Consent Decree for the life of the Consent Decree, or as long thereafter as is necessary for the Court
25 to resolve any motion to enforce this Consent Decree.

26 **I. OBJECTIVES**

27 6. It is the express purpose of the Settling Parties entering into this Consent Decree to
28 further the objectives set forth in the Clean Water Act, 33 U.S.C. §§ 1251, *et seq.*, and to resolve those

1 issues alleged by Plaintiff in its Complaint. In light of these objectives and as set forth fully below, A &
2 B Truck agrees to comply with the provisions of this Consent Decree and to comply with the
3 requirements of the 2014 Storm Water Permit and all applicable provisions of the Clean Water Act.
4 Specifically, A & B Truck agrees to comply with Receiving Water Limitation VI.A. in the 2014 Storm
5 Water Permit which requires that A & B Truck "shall ensure that industrial storm water discharges and
6 authorized Non-Stormwater Discharges do not cause or contribute to the exceedance of any applicable
7 water quality standards in any affected receiving water," and Effluent Limitation V.A. of the 2014 Storm
8 Water Permit which requires that A & B Truck "shall implement Best Management Practices ("BMPs")
9 that comply with the BAT/BCT requirements of the [Storm Water Permit] to reduce or prevent
10 discharges of pollutants in [A & B Truck] storm water discharge in a manner that reflects best industry
11 practice considering technological availability and economic practicability and achievability." A & B
12 Truck shall develop and implement BMPs necessary to achieve compliance with BAT/BCT standards
13 and with the applicable water quality standards.

14 **II. AGENCY REVIEW AND TERM OF CONSENT DECREE**

15 7. Plaintiff shall submit this Consent Decree to the United States Department of Justice and
16 the EPA (collectively "Federal Agencies") within three (3) days of the final signature of the Settling
17 Parties for agency review consistent with 40 C.F.R. § 135.5. The agency review period expires forty-five
18 (45) days after receipt by both agencies, as evidenced by written acknowledgement of receipt by the
19 agencies or the certified return receipts, copies of which shall be provided to A & B Truck if requested.
20 In the event that the Federal Agencies object to entry of this Consent Decree, the Settling Parties agree
21 to meet and confer to attempt to resolve the issue(s) raised by the Federal Agencies within a reasonable
22 amount of time.

23 8. The term "Effective Date" as used in this Consent Decree shall mean the day the Court
24 enters this Consent Decree.

25 9. This Consent Decree shall terminate three (3) years after the Effective Date
26 ("Termination Date"), unless there is a prior ongoing, unresolved dispute regarding A & B Truck's
27 compliance with this Consent Decree.

28 10. CERF may conduct an inspection of the A & B Truck Facility up to forty-five (45) days

1 prior to the Termination Date. The inspection shall be conducted according to the rules applicable to
2 annual site inspections described below.

3 **III. POLLUTION CONTROL REQUIREMENTS**

4 **A. Storm Water Pollution Reduction Measures**

5 11. The storm water pollution control measures required by this Consent Decree shall be
6 designed and operated to manage, through infiltration, treatment, and/or diversion of the volume of
7 runoff produced by the 85th percentile 24-hour storm event, as determined from local, historical rainfall
8 records and the area generating runoff pursuant to Storm Water Permit section X.6.a.i. ("Consent
9 Judgement Design Storm"). The structural storm water pollution control measures agreed to under this
10 Consent Decree shall be in place and operable throughout the entire year.

11 **12. Numeric Limits**

12 13. Numeric Limits for Discharges from A & B Truck Facility. Stormwater discharged from
13 the A & B Truck Facility shall not contain pollutants above the levels set forth in Table 1.

14 **Table 1 Numeric Limits for Discharges**

15

Pollutant	Limit	Test Method
Total Suspended Solids	100 mg/L	SM-2540-D
Total Recoverable Copper	0.014 mg/L	EPA-200.8
Total Recoverable Lead	0.082 mg/L	EPA-200.8
Total Recoverable Zinc	0.12 mg/L	EPA-200.8
Chemical Oxygen Demand	120 mg/L	SM 5220C
pH	6-9 units	Per Storm Water Permit Section XI.C.2

24

25

26 **14. Action Plan**

27 15. Discharge Action Plan for Table 1 Exceedances. If the result(s) from any sampling
28 event(s) conducted during a Wet Season reveals any contaminant at a concentration above the numeric

limits specified in Table 1, A & B Truck shall submit a plan to Plaintiff for reducing the level of pollutant to Table 1 Limits ("Discharge Action Plan"). The Discharge Action Plan for the A & B Truck Facility shall be prepared by a Qualified Industrial Storm Water Professional ("QISP") and must be submitted to Plaintiff within thirty (30) days of A & B Truck's receipt of sampling data showing exceedances of Table 1 Limits.

16. Discharge Action Plan Requirements. Each Discharge Action Plan submitted shall be prepared by a Qualified Industrial Storm Water Professional ("QISP") and include at a minimum:

- (1) Identification of the contaminant(s) discharged in excess of the numeric value(s) in Table 1;
- (2) An assessment of the source of each contaminant discharged in excess of the numeric value(s) in Table 1 and the extent to which those contaminants are associated with industrial activities;
- (3) Identification of additional BMPs, that shall be implemented to achieve compliance with the Table 1 Limit(s), as well as the design plans and calculations of these additional BMPs; and
- (4) Time schedules for implementation of the proposed BMPs. The time schedule(s) for implementation shall ensure that all BMPs are implemented as soon as possible but in no case later than September 30 (prior to the next Wet Season), provided however that A & B Truck shall be entitled to a single time extension for up to three (3) months upon the submission of the following information with the Discharge Action Plan: (1) an explanation of why it would be infeasible to implement the Discharge Action Plan by September 30 despite the exercise of due diligence and good faith effort, (2) a schedule and detailed description of the necessary tasks to be performed, and (3) a description of any additional temporary BMPs that will be implemented while permanent BMPs are being constructed.

17. Action Plan Review. Plaintiff shall have forty-five (45) days upon receipt of a Discharge Action Plan to provide A & B Truck with comments. Within fourteen (14) days from the date Plaintiff's comment on the Discharge Action Plan, A & B Truck shall provide Plaintiff with a written explanation prepared by a QISP if A & B Truck refuses to integrate any of Plaintiff's comments into the applicable Discharge Action Plan. Any disputes as to the adequacy of any Discharge Action Plan shall be resolved pursuant to the dispute resolution provisions of this Consent Decree.

18. A & B Truck shall diligently file and pursue all required local agency applications for

permits and/or approvals for the BMPs included in any Discharge Action Plan. A & B Truck shall further diligently pursue the procurement of contractors, labor, and materials to complete all such BMPs by the deadline for implementing the Discharge Action Plan set in Paragraph 14 described above, and shall use their best efforts to meet these deadlines.

19. Sampling at the A & B Truck Facility.

20. A & B Truck shall install a recording rain gauge capable of recording rainfall to 0.1 inches at the A & B Truck Facility within thirty (30) days of the Effective Date. A & B Truck shall maintain the recording rain gauge in accordance with the manufacturers' recommendations, maintain records of all maintenance and rain data, and provide such rain gauge data to Plaintiff at the end of each calendar quarter during the Wet Season (October 1 – May 30) for the term of this Consent Decree.

21. A & B Truck shall provide the records described in paragraph 17 to Plaintiff within ten (10) days of any written request by Plaintiff.

22. Storm Water Monitoring. By April 30, 2016, A & B Truck shall develop a plan for monitoring all storm water and non-storm water discharges from the A & B Truck Facility that meets the requirements of this Consent Decree and Section XI of the Stormwater Permit, and incorporate same into its SWPPP.

i. Sample Collection

23. During the life of this Consent Decree, A & B Truck shall collect samples of any stormwater discharge from industrial areas at the A & B Truck Facility in conformity with its Monitoring Plan. For purposes of this Consent Decree, this includes any stormwater discharge occurring during the A & B Truck Facility's operating hours or, for stormwater stored onsite prior to discharge, whenever stormwater is released off site, whether during operating hours or not. Should A & B Truck demonstrate full compliance with all of the discharge limitations in Table 1 for four (4) consecutive sampling events A & B Truck may reduce sampling in compliance with XI.C.7. of the Storm Water Permit, except under no circumstances shall A & B Truck be permitted to collect samples from less than two (2) discharges per wet season unless it does not discharge two times in a particular wet season.

ii. Sampling Analysis and Reporting

24. A & B Truck shall comply with the analytical methods as required by Section XI.B of the

1 Storm Water Permit as more fully described in the Monitoring Plan.

2 25. A & B Truck shall request that results of all sample analyses required by this Consent
3 Decree be reported to it within fifteen (15) days of laboratory receipt of the sample.

4 26. A & B Truck shall provide the complete laboratory results of all samples collected
5 pursuant to the Storm Water Permit or this Consent Decree to Plaintiff concurrently with the posting of
6 same on SMARTS or no later than fifteen (15) days from receipt of the sample results from the
7 laboratory, whichever is sooner. Where such results are not required by the Storm Water Permit, A & B
8 Truck shall provide the complete laboratory results of all samples collected pursuant to this Consent
9 Decree to Plaintiff within fifteen (15) days of receipt by A & B Truck from the laboratory.

10 27. A & B Truck shall submit a written report to Plaintiff no later than June 15 at the end of
11 each Wet Season that contains all rain gauge data for the Wet Season, all storm water samples collected
12 at the A & B Truck Facility, all analytical results from samples collected at the A & B Truck Facility, an
13 explanation of any failure to collect and analyze a storm water discharge as required by this Consent
14 Decree or the Storm Water Permit.

15 28. Any failure to sample pursuant to the requirements of this Consent Decree shall be
16 documented and explained to Plaintiff by email within five (5) days of the date a sample could have
17 been collected but was not.

18 29. **Visual Observations**

19 30. During the life of this Consent Decree, A & B Truck shall conduct visual observations
20 during normal scheduled facility operating hours during every rain event that produces a discharge at
21 any discharge points at the A & B Truck Facility pursuant to section XI.A. of the Storm Water Permit
22 and as more fully described in the A & B Truck SWPPP.

23 31. **Monitoring and Reporting Program Revisions**

24 32. By April 30, 2016, A & B Truck shall revise its Monitoring Plan for the A & B Truck
25 Facility to incorporate all sampling, analysis, observation, and reporting requirements of this Consent
26 Decree and the 2014 Storm Water Permit.

27 33. A & B Truck shall submit the revised Monitoring Plan for the A & B Truck Facility to
28 Plaintiff for review and comment. Plaintiff shall provide comments, if any, to A & B Truck within thirty

(30) days of receipt of the Monitoring Plan. A & B Truck shall incorporate Plaintiff's comments into the Monitoring Plan, or shall justify in a writing prepared by a QISP, or stormwater consultant prior to QISP certification, why any comment is not incorporated within fifteen (15) days of receiving comments. Any disputes over the adequacy of the revised Monitoring Plan shall be resolved pursuant to the dispute resolution provisions of this Consent Decree, set out in Section VI below.

34. Storm Water Pollution Prevention Plan Revisions

35. By April 30, 2016, A & B Truck shall revise its SWPPP to include all BMPs required by the Consent Decree and comply with all provisions of the Storm Water Permit.

36. A & B Truck shall submit the revised SWPPP to Plaintiff for review and comment. Plaintiff shall provide comments, if any, to A & B Truck within sixty (60) days of receipt of the SWPPP. A & B Truck shall incorporate Plaintiff's comments into the SWPPP, or shall justify in a writing prepared by a QISP, or stormwater consultant prior to QISP certification, why any comment is not incorporated within fifteen (15) days of receiving comments. Any disputes as to the adequacy of the revised SWPPP shall be resolved pursuant to the dispute resolution provisions of this Consent Decree, set out in Section VI below.

37. Additional SWPPP Revisions. A & B Truck shall engage a QISP to revise the SWPPP for the A & B Truck Facility if there are any changes in the Facility's operations, including, but not limited to, changes to storm water discharge point(s) or revisions and/or additions to the BMPs implemented pursuant to any Discharge Action Plan. A & B Truck shall submit any SWPPP revisions made pursuant to the requirements of this paragraph to Plaintiff for review and comment within ten (10) days of the SWPPP revision. Plaintiff will provide comments, if any, to A & B Truck within thirty (30) days of receipt of such revised SWPPP. A & B Truck shall incorporate Plaintiff's comments into any revised SWPPP, or shall justify in a writing prepared by a QISP as to why any comment is not incorporated within thirty (30) days of receiving comments. Any disputes as to the adequacy of the revised SWPPP shall be resolved pursuant to the dispute resolution provisions of this Consent Decree, set out in Section VI below.

38. Employee Training

39. Within thirty (30) days of the Effective Date of this Consent Decree, A & B Truck shall

1 develop and implement a training program, in compliance with Section X.H.1.f., X.H.1.g., and IX of the
2 Storm Water Permit ("Training Program"). At a minimum the Training Program shall include at least
3 the following:

4 i. Language. A & B Truck shall conduct the Training Program in the language or languages
5 in which all employees participating in the Training Program are fluent.

6 ii. Non-Stormwater Discharges. A & B Truck shall train all designated employees on the
7 Storm Water Permit's prohibition of non-storm water discharges, so that employees know what non-
8 storm water discharges are, that non-storm water discharges can result from improper surface washing
9 or dust control methods, and how to detect and prevent non-storm water discharges to ensure
10 compliance with this Consent Decree and the Storm Water Permit.

11 iii. BMPs. A & B Truck shall train all designated employees on BMP implementation and
12 maintenance to ensure that BMPs are implemented effectively to prevent the exposure of pollutants to
13 storm water, to prevent the discharge of contaminated storm water, and to ensure the proper treatment
14 of storm water at the A & B Truck Facility.

15 iv. Storm Water Sampling. A & B Truck shall designate an adequate number of employees
16 necessary to collect storm water samples from each discharge location as required by this Consent
17 Decree. The training shall include the proper sampling protocols, including chain of custody
18 requirements, to ensure storm water samples are properly collected, stored, and submitted to a
19 certified laboratory.

20 v. Visual Observation Training. A & B Truck shall provide training to all designated
21 employees at the A & B Truck Facility regarding visual observations pursuant to this Consent Decree
22 and the Storm Water Permit.

23 40. Training shall be provided by a QISP, or stormwater consultant prior to QISP
24 certification, who is familiar with the requirements of this Consent Decree and the Storm Water Permit.
25 The training shall be repeated annually, or as necessary to ensure that all such employees are familiar
26 with the requirements of this Consent Decree, the Storm Water Permit, and the A & B Truck Facility's
27 SWPPP. All new designated staff shall receive this training before assuming responsibilities for
28 implementing the A & B Truck Facility's SWPPP or Monitoring Plan.

41. A & B Truck shall maintain training records to document compliance with this section, and shall provide Plaintiff with a copy of these records within fourteen (14) days of receipt of a written request.

IV. Compliance Monitoring and Reporting

42. Site Inspections. Every year during the life of this Consent Decree, up to three (3) of Plaintiff's representatives may conduct one (1) Wet Season site inspection and one (1) Dry Season (June 1 – September 30) site inspection of the A & B Truck Facility. The site inspections shall occur during normal business hours. Plaintiff shall provide A & B Truck with twenty four (24) hours' notice (weekends and holidays excluded) prior to each Wet Season site inspection, and forty-eight (48) hours' notice (weekends and holidays excluded) prior to each Dry Season site inspection. Notice shall be provided by telephone and electronic mail, and shall state the names of all persons that Plaintiff will bring to the inspection.

43. During the site inspections, Plaintiff and its designated representatives shall be allowed access to the A & B Truck Facility's SWPPP(s), M&RP, and all other monitoring records, reports, and sampling data for the A & B Truck Facility.

44. During the site inspections, Plaintiff and its designated representatives may collect stormwater samples at the A & B Truck Facility.

45. During the site inspections, Plaintiff may take photographs and video recordings of the A & B Truck Facility. If Plaintiff takes any photographs or video recordings, Plaintiff shall provide A & B Truck with the photographs and video within fourteen (14) days after any written request by A & B Truck for such photographs and videos.

46. Compliance Monitoring and Oversight. A & B Truck shall pay a total of Four Thousand (\$4,000) to compensate Plaintiff for costs and fees to be incurred for monitoring A & B Truck's compliance with this Consent Decree. Payment shall be made within five (5) days of the Effective Date payable to "Coastal Environmental Rights Foundation" delivered Attn: Marco Gonzalez, 1140 S. Coast Highway 101, Encinitas CA, 92024.

47. Action Plan Payments. A & B Truck shall pay Three Thousand Dollars (\$3,000) each time an Action Plan is submitted to Plaintiff. Payments shall be submitted simultaneously with the

1 submittal of the Action Plan. Payments shall be made payable to “Coastal Environmental Rights
2 Foundation” and delivered Attn: Marco Gonzalez, 1140 S. Coast Highway 101, Encinitas CA, 92024 via
3 overnight delivery.

4 48. A & B Truck Document Provision. During the life of this Consent Decree, A & B Truck
5 shall copy Plaintiff on all documents related to storm water quality at the A & B Truck Facility that are
6 submitted to the Regional Board, the State Board, and/or any state or local agency, county, or
7 municipality. Such reports and documents shall be provided to Plaintiff on the date they are sent to the
8 agencies, counties, and/or municipalities. Any correspondence related to A & B Truck’s compliance
9 with the Storm Water Permit or storm water quality received by A & B Truck from any regulatory
10 agency, state or local agency, county, or municipality shall be provided to Plaintiff within ten (10) days
11 of receipt by A & B Truck.

12 V. Environmental Project, Reimbursement of Litigation Fees and Costs, and Stipulated
13 Payments

14 49. Environmental Project. To remediate the alleged environmental harms resulting from
15 non-compliance with the Storm Water Permit alleged in the Complaint, A & B Truck agrees to make a
16 payment of Ten Thousand Dollars (\$10,000) to San Diego Coastkeeper to fund environmental project
17 activities that will reduce or mitigate the impacts of storm water pollution from industrial activities on
18 the Southern California Bight and its tributaries. The payments shall be made within three (3) days of
19 the Effective Date payable to San Diego Coastkeeper, Attn: Matt O'Malley 2825 Dewey Rd, Suite 200
20 San Diego, CA 92117 via overnight delivery. A & B Truck shall provide Plaintiff with a copy of such
21 payment.

22 50. Reimbursement of Attorneys’ Fees and Costs. A & B Truck shall pay a total of Nine
23 Thousand Dollars (\$9,000) to Coast Law Group to fully reimburse CERF for its investigation fees and
24 costs, expert/consultant fees and costs, and reasonable attorneys’ fees incurred as a result of
25 investigating and preparing the lawsuit and negotiating this Consent Decree. Payment shall be made
26 within three (3) days of the Effective Date payable to “Coast Law Group, LLP” and delivered to Coast
27 Law Group, LLP, Attn: Livia Borak, 1140 South Coast Highway 101, Encinitas CA, 92024 via
28 overnight delivery.

1 51. Stipulated Payment. A & B Truck shall make a remediation payment of One Thousand
2 Dollars (\$1,000) for each missed deadline included in this Consent Decree. Payments for a missed
3 deadline shall be made for the restoration or improvement (or both) of the watershed in the area affected
4 by A & B Truck's alleged discharges and shall be awarded to San Diego Coastkeeper. A & B Truck
5 agrees to make the stipulated payment within thirty (30) days of a missed deadline. The payments shall
6 be mailed via overnight mail to the attention of San Diego Coastkeeper, Attn: Matt O'Malley 2825
7 Dewey Rd, Suite 200 San Diego, CA 92117. A & B Truck shall provide Plaintiff with a copy of each
8 such payment at the time it is made.

9 **VI. DISPUTE RESOLUTION AND RETENTION OF JURISDICTION**

10 52. This Court shall retain jurisdiction over this matter until the Termination Date defined
11 above for the purposes of implementing and enforcing the terms and conditions of this Consent Decree
12 and adjudicating all disputes among the Settling Parties that may arise under the provisions of this
13 Consent Decree, unless a Party files and is granted a timely motion requesting an extension of time for
14 the Court to retain jurisdiction. The Court shall have the power to enforce this Consent Decree with all
15 available legal and equitable remedies, including contempt.

16 53. Meet and Confer. A party to this Consent Decree shall invoke the dispute resolution
17 procedures of this Section by notifying all other Settling Parties in writing of the matter(s) in dispute.
18 The Settling Parties shall then meet and confer in good faith (either telephonically or in person) in an
19 attempt to resolve the dispute informally over a period of ten (10) days from the date of the notice. The
20 Settling Parties may elect to extend this time in an effort to resolve the dispute without court
21 intervention.

22 54. If the Settling Parties cannot resolve a dispute by the end of meet and confer informal
23 negotiations, the party initiating the dispute resolution provision may invoke formal dispute resolution
24 by filing a motion before the United States District Court for the Southern District of California. The
25 Settling Parties agree to request an expedited hearing schedule on the motion if requested by any
26 Settling Party.

27 55. Burden of Proof. In any dispute resolution proceeding, Defendant shall have the burden
28 of demonstrating its BMPs meet BAT/BCT standards as defined by the Clean water Act and

1 implementing regulations and are adequate to ensure Defendant's discharges do not cause or contribute
2 to a violation of water quality standards.

3 56. Enforcement Fees and Costs. Litigation costs and fees incurred in conducting a meet and
4 confer session(s) or otherwise addressing and/or resolving any dispute, including an alleged breach of
5 this Consent Decree, shall be awarded in accordance with the standard established by Section 505 of the
6 Clean Water Act, 33 U.S.C. §§ 1365 and 1319, and case law interpreting that standard.

7 **VII. MUTUAL RELEASE OF LIABILITY AND COVENANT NOT TO SUE**

8 57. Plaintiff's Release. Upon the Effective Date of this Consent Decree, Plaintiff, on its own
9 behalf and on behalf of its current and former officers, directors, employees, and each of their successors
10 and assigns, and agents, and other representatives release all persons including, without limitation, A &
11 B Truck (and each of its direct and indirect parent and subsidiary companies and affiliates, and its
12 respective current and former officers, directors, members, employees, shareholders, and each of their
13 predecessors, successors, and assigns, and each of its agents, attorneys, consultants, and other
14 representatives) from and waive all claims alleged in the Notice Letter and Complaint up to the Effective
15 Date of this Consent Decree.

16 58. A & B Truck's Release. Upon the Effective Date of this Consent Decree, A & B Truck,
17 on its own behalf and on behalf of its current and former officers, directors, employees, members, and
18 each of their successors and assigns, and their agents, and other representatives releases Plaintiff (and its
19 current and former officers, directors, employees, members, parents, subsidiaries, and affiliates, and
20 each of their successors and assigns, and their agents, attorneys, and other representatives) from and
21 waives all claims which arise from or pertain to this action, including all claims for fees (including fees
22 of attorneys, experts, and others), costs, expenses, or any other sum incurred or claimed for matters
23 related to Plaintiff's Notice Letter and Complaint up to entry of this Consent Decree by the Court.

24 59. Nothing in this Consent Decree limits or otherwise affects any Party's right to address or
25 take any position that it deems necessary or appropriate in any formal or informal proceeding before the
26 State Board, Regional Board, EPA, or any other administrative body on any other matter relating to A &
27 B Truck's compliance with the Storm Water Permit or the Clean Water Act occurring or arising after the
28 effective date of this Consent Decree.

1 **VIII. MISCELLANEOUS PROVISIONS**

2 60. No Admission of Liability. Neither this Consent Decree, the implementation of additional
3 BMPs, nor any payment pursuant to the Consent Decree shall constitute or be construed as a finding,
4 adjudication, admission, or acknowledgment of any fact, law, or liability, nor shall it be construed as an
5 admission of violation of any law, rule, or regulation. A & B Truck maintains and reserves all defenses
6 they may have to any alleged violations that may be raised in the future.

7 61. Construction. The language in all parts of this Consent Decree shall be construed
8 according to its plain and ordinary meaning, except as to those terms defined in the Storm Water Permit,
9 the Clean Water Act, or specifically herein.

10 62. Choice of Law. The laws of the United States shall govern this Consent Decree.

11 63. Severability. In the event that any provision, paragraph, section, or sentence of this
12 Consent Decree is held by a court to be unenforceable, the validity of the enforceable provisions shall
13 not be adversely affected.

14 64. Correspondence. Unless specifically provided for in this Consent Decree, all notices
15 required herein or any other correspondence pertaining to this Consent Decree shall be sent by U.S. mail
16 or electronic mail as follows:

17 If to CERF:

18 Coastal Environmental Rights Foundation
19 Att: Sara Kent
20 1140 South Coast Highway 101
21 Encinitas, CA 92024
22 sara@cerf.org

23 With Copy to:

24 Coast Law Group LLP
25 Att: Livia Borak
26 1140 South Coast Hwy 101
27 Encinitas, CA 92024
28 livia@coastlawgroup.com

If to A & B Truck:

Andy Stannard
2863 Commercial Street

San Diego, California 92113
Alstannard1@yahoo.com

65. Notifications of communications shall be deemed submitted three (3) business days after having been sent via U.S. mail or the day of sending notification or communication by electronic mail. Any change of address or addresses shall be communicated in the manner described above for giving notices.

66. Effect of Consent Decree. Except as provided herein, Plaintiff does not, by its consent to this Consent Decree, warrant or aver in any manner that A & B Truck's compliance with this Consent Decree will constitute or result in compliance with any federal or state law or regulation. Nothing in this Consent Decree shall be construed to affect or limit in any way the obligation of A & B Truck to comply with all federal, state, and local laws and regulations governing any activity required by this Consent Decree.

67. Counterparts. This Consent Decree may be executed in any number of counterparts, all of which together shall constitute one original document. Telecopy, email of a .pdf signature, or facsimile copies of original signature shall be deemed to be originally executed counterparts of this Consent Decree.

68. Modification of the Consent Decree. This Consent Decree, and any provisions herein, may not be changed, waived, discharged, or terminated unless by a written instrument, signed by the Settling Parties. If any Settling Party wishes to modify any provision of this Consent Decree, the Settling Party must notify the other Settling Party in writing at least twenty-one (21) days prior to taking any step to implement the proposed change.

69. Full Settlement. This Consent Decree constitutes a full and final settlement of this matter.

70. Integration Clause. This is an integrated Consent Decree. This Consent Decree is intended to be a full and complete statement of the terms of the agreement between the Settling Parties and expressly supersedes any and all prior oral or written agreements, covenants, representations, and warranties (express or implied) concerning the subject matter of this Consent Decree.

71. Authority. The undersigned representatives for Plaintiff and A & B Truck each certify

1 that he/she is fully authorized by the party whom he/she represents to enter into the terms and conditions
2 of this Consent Decree.

3 72. The Settling Parties certify that their undersigned representatives are fully authorized to
4 enter into this Consent Decree, to execute it on behalf of the Settling Parties, and to legally bind the
5 Settling Parties to its terms.

6 73. The Settling Parties, including any successors or assigns, agree to be bound by this
7 Consent Decree and not to contest its validity in any subsequent proceeding to implement or enforce its
8 terms.

9 **IN WITNESS WHEREOF**, the undersigned have executed this Consent Decree as of the date
10 first set forth below.

11
12 APPROVED AS TO CONTENT

13
14 Dated: 4/20/2016


15 By: 
16 Sara Kent
17 Programs Director
18 Coastal Environmental Rights Foundation

19 Dated: _____

20 By: _____
21 Andrew Stannard
22 Vice President
23 Andy's Auto Wrecking, Inc. dba
24 A & B Truck Recycling

25
26 APPROVED AS TO FORM

27 Dated: 4-20-2016

28 By: 
Livia Borak
Coast Law Group.
Attorneys for CERF

1 that he/she is fully authorized by the party whom he/she represents to enter into the terms and conditions
2 of this Consent Decree.

3 72. The Settling Parties certify that their undersigned representatives are fully authorized to
4 enter into this Consent Decree, to execute it on behalf of the Settling Parties, and to legally bind the
5 Settling Parties to its terms.

6 73. The Settling Parties, including any successors or assigns, agree to be bound by this
7 Consent Decree and not to contest its validity in any subsequent proceeding to implement or enforce its
8 terms.

9 IN WITNESS WHEREOF, the undersigned have executed this Consent Decree as of the date
10 first set forth below.

11
12 APPROVED AS TO CONTENT

13
14 Dated: _____

By: _____

Sara Kent
Programs Director
Coastal Environmental Rights Foundation

15
16
17
18 Dated: 4-18-16

By: 

Andrew Stannard
Vice President
Andy's Auto Wrecking, Inc. dba
A & B Truck Recycling

19
20
21
22
23 APPROVED AS TO FORM

24
25 Dated: _____

By: _____

Livia Borak
Coast Law Group.
Attorneys for CERF

1 **IT IS SO ORDERED.**

2
3 Date: _____

4 _____
5 United States District Court Judge
6 Southern District of California
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 COAST LAW GROUP, LLP
2 MARCO A. GONZALEZ (SBN 190832)
3 LIVIA BORAK (SBN 259434)
4 1140 South Coast Highway 101
5 Encinitas, CA 92024
6 Ph: (760) 942-8505
7 Fx: (760) 942-8515
8 email: marco@coastlawgroup.com
9

10 Attorneys for Plaintiff
11 COASTAL ENVIRONMENTAL RIGHTS FOUNDATION
12

13 **UNITED STATES DISTRICT COURT**
14 **SOUTHERN DISTRICT OF CALIFORNIA**
15

16 COASTAL ENVIRONMENTAL RIGHTS
17 FOUNDATION,
18 a non-profit corporation,
19

20 Plaintiff,
21

22 v.
23

24 ANDY'S AUTO WRECKING, INC., a
25 California corporation, DBA A & B
26 TRUCK RECYCLING,
27

28 Defendant.

Civil Case No.: **'16CV0944 JM BGS**

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF AND
CIVIL PENALTIES**

**(Federal Water Pollution Control Act,
33 U.S.C. § 1251 *et seq.*)**

1 Coastal Environmental Rights Foundation, (“CERF” or “Plaintiff”), by and through its
2 counsel, hereby alleges:

3 **I. JURISDICTION AND VENUE**

4 1. This civil suit is brought under the citizen suit enforcement provisions of
5 the Federal Water Pollution Control Act, 33 U.S.C. § 1251 *et seq.* (the “Clean Water
6 Act” or the “CWA”). This Court has subject matter jurisdiction over the parties and this
7 action pursuant to Section 505(a)(1) of the CWA, 33 U.S.C. § 1365(a)(1), and 28 U.S.C.
8 § 1331 (an action for declaratory and injunctive relief arising under the Constitution and
9 laws of the United States).

10 2. On February 24, 2016, Plaintiff issued a 60-day notice letter (“Notice
11 Letter”) to Andy’s Auto Wrecking, Incorporated, doing business as A & B Truck
12 Recycling (“A & B Truck” or “Defendant”) regarding its violations of the Clean Water
13 Act, and indicating Plaintiff’s intention to file suit against Defendant. The Notice Letter
14 was sent to the registered agent for A & B Truck, as required by 40 C.F.R. §
15 135.2(a)(2), the Facility, as well as the Administrator of the United States
16 Environmental Protection Agency (“EPA”), the Administrator of EPA Region IX, the
17 Executive Director of the State Water Resources Control Board (“State Board”), and the
18 Executive Officer of the Regional Water Quality Control Board, San Diego Region
19 (“Regional Board”) as required by CWA, 33 U.S.C. § 1365(b)(1)(A). A true and correct
20 copy of the Notice Letter is attached hereto as Exhibit A and incorporated herein.

21 3. More than sixty days has passed since the Notice Letter was served on
22 Defendant and the State and Federal agencies. Plaintiff is informed and believes, and
23 thereon alleges, that neither the EPA nor the State of California has commenced or is
24 diligently prosecuting an action to redress the violations alleged in this complaint. (33
25 U.S.C. § 1365(b)(1)(B)). This action is not barred by any prior administrative penalty
26 under Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

27 4. Venue is proper in the Southern District of California pursuant to Section
28 505(c)(1) of the CWA, 33 U.S.C. § 1365(c)(1), because the sources of the violations are

located within this judicial district.

II. INTRODUCTION

5. This complaint seeks relief for the Defendant's unlawful discharge of pollutants into waters of the United States from its operations at 2863 Commercial Street, San Diego, California, 92113 ("Facility" or "Site"). Specifically, Defendant discharges storm water runoff from the Site into storm drains, Chollas Creek, downstream to San Diego Bay, and ultimately the Pacific Ocean (collectively referred to as the "Receiving Waters"). This complaint also seeks relief for Defendant's violations of the filing, monitoring, reporting, discharge and management practice requirements, and other procedural and substantive requirements of California's General Permit for Discharges Associated with Industrial Activities (*National Pollution Discharge Elimination System ("NPDES") General Permit No. CAS000001, State Water Resources Control Board Water Quality Order No. 97-03-DWQ, as amended by Order No. 97-03-DWQ*) ("Industrial Permit"). This complaint further seeks relief to prevent discharges in violation of the Industrial Permit as amended by *Order No. 2014-0057-DWQ*. These are ongoing and continuous violations of the Clean Water Act and the Industrial Permit.

6. With every rainfall event, hundreds of millions of gallons of polluted rainwater, originating from industrial operations such as the A & B Truck, flow into City of San Diego storm drain systems, Chollas Creek, San Diego Bay and ultimately the Pacific Ocean. This discharge of pollutants in storm water from industrial activities such as the A & B Truck Facility contributes to the impairment of downstream waters and compromises or destroys their beneficial uses.

III. PARTIES

A. Coastal Environmental Rights Foundation

7. Plaintiff CERF is a non-profit public benefit corporation organized under the laws of the State of California.

8. CERF's office is located at 1140 South Coast Highway 101, Encinitas

1 California, 92024.

2 9. CERF was founded by surfers in North San Diego County and active
3 throughout California's coastal communities. CERF was established to aggressively
4 advocate, including through litigation, for the protection and enhancement of coastal
5 natural resources and the quality of life for coastal residents. One of CERF's primary
6 areas of advocacy is water quality protection and enhancement.

7 10. Plaintiff has thousands of members who live and/or recreate in and around
8 Chollas Creek, San Diego Bay, and the Pacific Ocean.

9 11. Plaintiff's members use and enjoy the Receiving Waters to fish, sail, boat,
10 kayak, paddle board, surf, swim, hike, view wildlife, and engage in scientific study
11 including monitoring activities, among other activities. Defendant discharges pollutants
12 from the Sites to the Receiving Waters used by Plaintiff's members. Thus, Defendant's
13 discharge of pollutants impairs Plaintiff's members' uses and enjoyment of the
14 Receiving Waters.

15 12. The interests of Plaintiff's members have been, are being, and will
16 continue to be adversely affected by the Defendant's failure to comply with the Clean
17 Water Act and the Industrial Permit. The relief sought herein will redress the harms to
18 Plaintiff caused by Defendant's activities. Continuing commission of the acts and
19 omissions alleged above will irreparably harm Plaintiff's members, for which harm they
20 have no plain, speedy or adequate remedy at law.

21 **B. The A & B Truck Facility Owners and/or Operators**

22 13. Plaintiff is informed and believes that Andy's Auto Wrecking,
23 Incorporated, doing business as A & B Truck Recycling is a private corporation
24 organized under the laws of the State of California, and is located in San Diego,
25 California.

26 14. Plaintiff is informed and believes, and thereon alleges that Defendant A &
27 B Truck is current owner and operator of the property located at 2863 Commercial
28 Street, San Diego, California, 92113 ("Property").

1 15. Plaintiff is informed and believes, and thereon alleges A & B Truck has
2 owned and operated the A & B Truck Facility since at least July 19, 1993.

3 **IV. STATUTORY BACKGROUND**

4 **A. The Clean Water Act**

5 16. Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), prohibits the
6 discharge of any pollutant into waters of the United States unless the discharge complies
7 with various enumerated sections of the CWA. Among other things, Section 301(a)
8 prohibits discharges not authorized by, or in violation of, the terms of an NPDES permit
9 issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

10 17. Section 402(p) of the CWA establishes a framework for regulating
11 municipal and industrial storm water discharges under the NPDES program. (33 U.S.C.
12 § 1342(p)). States with approved NPDES permit programs are authorized by Section
13 402(b) to regulate industrial storm water discharges through individual permits issued to
14 dischargers and/or through the issuance of a single, statewide general permit applicable
15 to all industrial storm water dischargers. (33 U.S.C. § 1342).

16 18. Section 402(b) of the CWA allows each state to administer its own EPA-
17 approved permit for storm water discharges. (33 U.S.C. § 1342(b)). In California, the
18 State Board is charged with regulating pollutants to protect California's water resources.

19 19. The Industrial Permit is a statewide general NPDES permit issued by the
20 State Board pursuant to Section 402 of the CWA that regulates the discharge of
21 pollutants from industrial sites. (33 U.S.C. § 1342).

22 20. Section 505(a)(1) of the CWA provides for citizen enforcement actions
23 against any "person" who is alleged to be in violation of an "effluent standard or
24 limitation... or an order issued by the Administrator or a State with respect to such a
25 standard or limitation." (33 U.S.C. § 1365(a)(1)).

26 21. An action for injunctive relief under the CWA is authorized by 33 U.S.C.
27 § 1365(a).

28 22. Each separate violation of the Clean Water Act subjects the violator to a

1 penalty of up to \$37,500 per day per violation for all violations occurring after January
2 27, 2009. (33 U.S.C. § 1319(d); Adjustment of Civil Monetary Penalties for Inflation,
3 40 C.F.R. §19.4).

4 23. Section 505(d) of the Clean Water Act permits prevailing parties to
5 recover costs, including attorneys' and experts' fees. (33 U.S.C. § 1365(d)).

6 **B. California's Industrial Permit**

7 24. The Industrial Permit, NPDES General Permit No. CAS000001, Water
8 Quality Order No. 92-12-DWQ, as amended by Order No. 97-03-DWQ and Order No.
9 2014-0057-DWQ is an NPDES permit adopted pursuant to Section 402 of the CWA, 33
10 U.S.C. § 1342(b) and 40 C.F.R § 123.25. In order to discharge storm water lawfully in
11 California, industrial dischargers must secure coverage under the Industrial Permit and
12 comply with its terms, or obtain and comply with an individual NPDES permit. The
13 Industrial Permit as amended pursuant to Order No. 2014-0057-DWQ, became effective
14 July 1, 2015 ("New Industrial Permit").

15 25. Failure to comply with the Industrial Permit or New Industrial Permit
16 constitutes a Clean Water Act violation. (Industrial Permit, § C.1; New Industrial Permit
17 §XXI.A.).

18 26. Discharge Prohibitions A(1) of the Industrial Permit and III.B. of the New
19 Industrial Permit prohibit the direct or indirect discharge of materials other than storm
20 water ("non-storm water discharges"), which are not otherwise regulated by an NPDES
21 permit, to the waters of the United States. Discharge Prohibition A(2) of the Industrial
22 Permit and III.C. of the New Industrial Permit prohibit storm water discharges and
23 authorized non-storm water discharges which cause or threaten to cause pollution,
24 contamination, or nuisance.

25 27. Effluent limitations B(3) of the Industrial Permit and Sections I.D and
26 V.A. of the New Industrial Permit require facility operators to reduce or prevent
27 pollutants associated with industrial activity in storm water discharges and authorized
28 non-storm water discharges through the implementation of Best Available Technology

1 Economically Achievable (“BAT”) for toxic pollutants and Best Conventional Pollutant
2 Control Technology (“BCT”) for conventional pollutants.

3 28. Industrial Permit Receiving Water Limitation C(1) and New Industrial
4 Permit Receiving Water Limitation VI.B. prohibit storm water discharges and
5 authorized non-storm water discharges to surface or groundwater that adversely impacts
6 human health or the environment.

7 29. Industrial Permit Receiving Water Limitation C(2) and New Industrial
8 Permit Receiving Water Limitation VI.A. prohibit storm water discharges and
9 authorized non-storm water discharges that cause or contribute to an exceedance of an
10 applicable water quality standard in a Statewide Water Quality Control Plan or the
11 applicable Regional Board’s Basin Plan.

12 30. Section A(1) and Provision E(2) of the Industrial Permit require
13 dischargers to have developed and implemented a Storm Water Pollution Prevention
14 Plan (“SWPPP”) by October 1, 1992, or prior to beginning industrial activities, that
15 meets all the requirements of the Industrial Permit. Sections X.A. and B. of the New
16 Industrial Permit require development and implementation of site-specific SWPPPs by
17 July 1, 2015 or upon commencement of industrial activity.

18 31. The objective of the SWPPP is to identify and evaluate sources of
19 pollutants associated with industrial activities that may affect the quality of storm water
20 discharges from the Sites, and identify and implement site-specific Best Management
21 Practices (“BMPs”) to reduce or prevent pollutants associated with industrial activities
22 in storm water discharges. (Industrial Permit, Section A(2); New Industrial Permit,
23 Section X.C.1).

24 32. To ensure its effectiveness, the SWPPP must be evaluated on an annual
25 basis, and it must be revised as necessary to ensure compliance with the Permit.
26 (Industrial Permit, Sections A(9), (10); New Industrial Permit, Sections XA. and
27 X.B.1.).

28 33. Sections A(3) through A(10) of the Industrial Permit and Sections X.A to

1 X.I. of the New Industrial Permit set forth the requirements for a SWPPP.

2 34. The SWPPP must include a site map showing the facility boundaries,
3 storm water drainage areas with flow patterns, nearby water bodies, the location of the
4 storm water collection, conveyance and discharge system, structural control measures,
5 areas of actual and potential pollutant contact, and areas of industrial activity. (Industrial
6 Permit, Section A(4); New Industrial Permit, Section X.E.).

7 35. Dischargers are also required to prepare and implement a monitoring and
8 reporting program ("M&RP"). (Industrial Permit, Sections E(3), B(1); New Industrial
9 Permit, Section XI).

10 36. The objective of the M&RP is to ensure that BMPs have been adequately
11 developed and implemented, revised as necessary, and to ensure that storm water
12 discharges are in compliance with the Industrial Permit (up to July 1, 2015) and New
13 Industrial Permit (July 1, 2015 and thereafter) Discharge Prohibitions, Effluent
14 Limitations, and Receiving Water Limitations. (Industrial Permit, Section B(2); New
15 Industrial Permit, Finding J.56).

16 37. The Industrial Permit and New Industrial Permit require dischargers to
17 conduct visual observations for the presence of unauthorized non-storm water
18 discharges, to document the source of any discharge, and to report the presence of any
19 discolorations, stains, odors, and floating materials in the discharge.

20 38. The Industrial Permit and New Industrial Permit require dischargers to
21 visually observe drainage areas during the wet season (October 1 - May 30) and to
22 document the presence of any floating and suspended materials, oil and grease,
23 discolorations, turbidity, or odor in the discharge, and the source of any pollutants.

24 39. Both the Industrial Permit and New Industrial Permit require dischargers
25 to maintain records of observations, observation dates, locations observed, and
26 responses taken to eliminate unauthorized non-storm water discharges and to reduce or
27 prevent pollutants from contacting non-storm water and storm water discharges.

28 40. The Industrial Permit requires dischargers to collect a sample from all

discharge points during the first storm event of the wet season and during at least one other storm event of the wet season, for a total of two samples per wet season. (Industrial Permit, Section (B)(5)). The New Industrial permit requires dischargers to collect and analyze storm water samples from two storm events with the first half of each reporting year (July 1 to December 31) and two from the second half (January 1 to June 30). (New Industrial Permit, Section XI.B.2.).

41. Dischargers must analyze each sample for pH, total suspended solids, oil and grease, and for toxic chemicals and other pollutants likely to be present in significant quantities in the storm water discharged from the facility. (Industrial Permit, Section B(5)(c); New Industrial Permit, Section XI.B.6).

42. Dischargers must submit "Annual Reports" to the Regional Board in July of each year. (Industrial Permit, Section B(14); New Industrial Permit, Section XVI.A.).

V. STATEMENT OF FACTS

A. A & B Truck Facility

43. Plaintiff is informed and believes, and thereon alleges the A & B Truck is a ferrous steel fabrication facility. The A & B Truck Facility belongs to Sector M of the Industrial Permit and its standard industrial classification (SIC) code is 5015.

44. Plaintiff's investigators have conducted observations of the A & B Truck Facility.

45. Plaintiff is informed and believes, and thereon alleges the Facility handles, collects, drains, and sorts various materials, including salvaged vehicles, engines, transmissions, rear ends, radiators, wheels, rims and other vehicle parts.

46. Plaintiff is informed and believes, and thereon alleges significant materials stored onsite and exposed to rainfall include salvaged vehicles, engines, transmissions, rear ends, radiators, oil filters, batteries, waste oils, antifreeze, drained and new fuels, freon, tires, lead weights, mercury switches, wheels and rims, wash water, crushed vehicles, delivery trucks and forklifts..

47. Plaintiff is informed and believes, and thereon alleges particulates from

1 operations, oil, grease, bacteria, suspended solids, solvents, and metals such as
2 aluminum, copper, lead, iron and zinc materials are exposed to storm water at the A & B
3 Truck Facility.

4 48. Plaintiff is informed and believes, and thereon alleges that storm water is
5 conveyed to the north side of the Site, where it flows out of two gates, one to the
6 northwest and the other to the northeast, into storm drains on Commercial Street.

7 49. During rain events, water visibly laden within contaminants, including oil
8 and grease, flows from the Facility onto Commercial Street and into City of San Diego
9 storm drains.

10 50. The A & B Facility discharges into storm drains that discharge into
11 Chollas Creek, downstream to the San Diego Bay, and ultimately the Pacific Ocean.

12 51. The EPA promulgated regulations for the Section 402 NPDES permit
13 program defining waters of the United States. (*See* 40 C.F.R. § 122.2). The EPA
14 interprets waters of the United States to include not only traditionally navigable waters
15 but also other waters, including waters tributary to navigable waters, wetlands adjacent
16 to navigable waters, and other waters including intermittent streams that could affect
17 interstate commerce. The CWA requires any person who discharges or proposes to
18 discharge pollutants into waters of the United States to submit an NPDES permit
19 application. (40 C.F.R. § 122.21).

20 52. The Clean Water Act confers jurisdiction over non-navigable waters that
21 are tributary to traditionally navigable waters where the non-navigable water at issue
22 has a significant nexus to the navigable water. (*See Rapanos v. United States*, 547 U.S.
23 715 (2006)). A significant nexus is established if the “[receiving waters], either alone or
24 in combination with similarly situated lands in the region, significantly affect the
25 chemical, physical, and biological integrity of other covered waters.” (*Id.* at 780).

26 53. A significant nexus is also established if waters that are tributary to
27 navigable waters have flood control properties, including functions such as the
28 reduction of flow, pollutant trapping, and nutrient recycling. (*Id.* at 783).

54. Information available to Plaintiff indicates that each of the surface waters into which the A & B Truck Facility discharges polluted storm water are tributaries to traditional navigable waters, such as Chollas Creek, San Diego Bay and the Pacific Ocean.

55. Plaintiff is informed and believes, and thereon alleges the A & B Truck Facility's polluted discharges cause and/or contribute to the impairment of water quality in Chollas Creek and San Diego Bay.

56. Water Quality Standards are pollutant concentration levels determined by the State Board and the EPA to be protective of the beneficial uses of the receiving waters. Discharges above Water Quality Standards contribute to the impairment of the receiving waters' beneficial uses.

57. The applicable Water Quality Standards include, but are not limited to, those set out by the State of California in the Criteria for Priority Toxic Pollutants, 40 C.F.R. § 131.38, ("California Toxics Rule" or "CTR") and in the Basin Plan. The CTR limits are, in part, as follows: lead – .065 milligrams per liter (mg/L); copper – .013 mg/L; zinc – .12 mg/L. These numeric criteria are set to protect human health and the environment in the State of California. The CTR limits represented are the maximum concentration levels permissible to achieve health and environmental protection goals.

58. EPA Benchmarks are the pollutant concentrations above which EPA has determined are indicative of a facility not successfully developing or implementing BMPs that meet BAT for toxic pollutants and BCT for conventional pollutants. (See Multi-Sector General Permits for Stormwater Discharges Associated with Industrial Activity (MSGP), 2015, §§6.2.1, 8.M, Table 8.M-1). The benchmark values provide an appropriate level to determine whether a facility's storm water pollution prevention measures are successfully implemented. (MSGP Fact Sheet, p. 52). Failure to conduct and document corrective action and revision of control measures in response to benchmark exceedances constitutes a permit violation. (*Id.*, at p. 65).

59. EPA has established the following benchmark values for Sector M, Automobile Salvage Yards: aluminum 0.75 mg/L; iron: 1.0 mg/L; and lead (freshwater)¹ – 0.014-.262 mg/L. (MSGP, §8.M.5, Table 8.M).

60. The Regional Board’s Basin Plan establishes water quality objectives, implementation plans for point and nonpoint source discharges, and prohibitions, and furthers statewide plans and policies intended to preserve and enhance the beneficial uses of all waters in the San Diego region. (*See* Basin Plan at p. 1-1). The Basin Plan identifies several beneficial uses for regional waters, including for Chollas Creek. (Basin Plan, Table 2-2).

B. Past and Present Industrial Activity at the A & B Truck Facility

61. Plaintiff is informed, believes, and thereon alleges that Defendant enrolled under the Industrial Permit on July 19, 1993, Waste Discharge Identification Number 9 37I010097, and identified its SIC code as 5015.

62. Plaintiff is informed, believes, and thereon alleges that Defendant enrolled under the New Industrial Permit on May 8, 2015.

63. Plaintiff is informed, believes, and thereon alleges that Defendant handles, collects, drains, and sorts materials for recycling.

64. Plaintiff is informed, believes, and thereon alleges that Defendant crushes stripped vehicles for transport offsite.

65. The potential pollutant sources associated with the industrial activities at the Facility include, but are not limited to: vehicle unloading and holding areas; drained vehicle storage areas; outdoor storage areas for dismantled parts; storage bins; tanks and drums; equipment maintenance area; refueling area; fluid draining and dismantling area; and the on-site equipment.

66. Plaintiff is informed, believes, and thereon alleges that pollutants present in storm water discharged from the Facility therefore include but are not limited to:

¹ The zinc benchmark is dependent on water hardness.

1 toxic metals such as copper, iron, zinc, lead, and aluminum; petroleum products
2 including oil, fuel, and grease; plastics; chemical admixtures, acids and solvents; total
3 suspended solids and pH-affecting substances; phosphorous; and fugitive and other dust,
4 dirt and debris.

5 67. Based upon Plaintiff's investigation, Plaintiff is informed, believes, and
6 thereon alleges Defendant stores metal and other materials outside where it is exposed
7 to storm water.

8 68. Plaintiff is informed, believes, and thereon alleges that there are drums
9 and other containers stored on-Site that are uncovered and/or uncontained.

10 69. Plaintiff is informed, believes, and thereon alleges that the Facility lacks
11 effective BMPs to control the flow of storm water from the Facility into the City of San
12 Diego and Chollas Creek drainage channels. As a result, suspended solids, metal
13 particles, and other pollutants have been and continue to be conveyed from the A & B
14 Truck Facility into the Chollas Creek and San Diego Bay drainage channels.

15 70. As a result, Plaintiff is informed, believes, and thereon alleges that during
16 rain events, storm water carries pollutants from the Facility outdoor storage areas, bins
17 and dumpsters, floor contaminants, equipment, uncontained metal drums, and other
18 sources directly into the storm drains and Chollas Creek and San Diego Bay drainage
19 channels.

20 71. Plaintiff is informed, believes, and thereon alleges that the A & B Truck
21 Facility pollution control measures are ineffective in controlling the exposure of
22 pollutant sources to storm water at the A & B Truck Facility.

23 **C. The A & B Truck Facility and its Associated Discharge of Pollutants**

24 72. Plaintiff is informed, believes, and thereon alleges that with every
25 significant rain event, the A & B Truck Facility discharges polluted storm water from
26 the industrial activities at the facility via the City of San Diego's storm drain system and
27 into the Receiving Waters.

28 73. Plaintiff is informed, believes, and thereon alleges that the Receiving

1 Waters into which the Facility discharges polluted storm water are waters of the United
2 States and therefore the Industrial Permit and New Industrial Permit properly regulate
3 discharges to those waters.

4 74. Surface waters that cannot support their Beneficial Uses listed in the Basin
5 Plan are designated as impaired water bodies pursuant to section 303(d) of the Clean
6 Water Act. According to the 2010 303(d) List of Impaired Water Bodies, Chollas Creek
7 is impaired for copper, diazinon, bacteria, lead, phosphorous, nitrogen, trash, and zinc.

8 75. San Diego Bay, near Chollas Creek, is listed as impaired for benthic
9 community effects, PCBs, and sediment toxicity.

10 76. Because discharges from the Facility contain particulates and metals, the A
11 & B Truck Facility's polluted discharges cause and/or contribute to the impairment of
12 water quality in the Receiving Waters.

13 77. Plaintiff is informed, believes, and thereon alleges that the storm water
14 discharged from the Facility has exceeded the CTR Water Quality Standards applicable
15 to zinc, lead, and copper in California.

16 78. Plaintiff is informed, believes, and thereon alleges that the storm water
17 discharged from the Facility has also exceeded the EPA Benchmark values and New
18 Industrial Permit Numeric Action Levels for aluminum, iron and TSS.

19 79. A & B Truck's water monitoring samples indicate exceedances as high as
20 16 times applicable water quality standards.

21 80. Plaintiff is informed, believes, and thereon alleges that during every
22 significant rain event that has occurred at the Facility since February 24, 2011 through
23 the present, Defendant has discharged and continues to discharge storm water from the
24 Facility that contains pollutants at levels in violation of the prohibitions and limitations
25 set forth in the Industrial Permit and other applicable Water Quality Standards.

26 81. Plaintiff is informed, believes, and thereon alleges, from visual
27 observations, sample results, and investigations available to Plaintiff, Defendant has
28 failed and continues to fail to develop and/or implement adequate BMPs to prevent the

1 discharge of polluted storm water from the A & B Truck Facility. The inadequacy of the
2 BMPs at the Facility is a result of the Defendant's failure to develop and implement an
3 adequate SWPPP and companion M&RP for this Site. Therefore, storm water
4 discharges from the Facility contain pollutant concentration levels that are above EPA
5 Benchmarks, Numeric Action Levels and applicable Water Quality Standards.

6 82. Plaintiff is informed, believes, and thereon alleges that since at least
7 February 24, 2011 through the present, Defendant has failed to develop and implement
8 BMPs that meet the standards of BAT/BCT at the Facility in violation of Effluent
9 Limitation B(3) of the Industrial Permit. Each day that Defendant has failed and
10 continues to fail to implement adequate BMPs to achieve BAT/BCT constitutes a
11 separate violation of the Industrial Permit and the CWA.

12 83. Based on its investigation of the Facility, Plaintiff is informed, believes,
13 and thereon alleges Defendant has failed to develop and implement an adequate SWPPP
14 since at least February 24, 2011 through the present. Each day that Defendant has failed
15 and continues to fail to implement an adequate SWPPP constitutes a separate violation
16 of the Industrial Permit and the CWA.

17 84. Plaintiff is informed, believes, and thereon alleges that Defendant has
18 failed to submit written reports to the Regional Board identifying BMPs necessary to
19 achieve BAT/BCT at the A & B Truck Facility since at least February 24, 2011, in
20 violation of Receiving Water Limitations C(3) and C(4) of the Industrial Permit and
21 New Industrial Permit Receiving Water Limitation VI.A. Each day that Defendant has
22 operated the Facility without meeting this reporting requirement of the Industrial Permit
23 constitutes a separate violation of the Industrial Permit and the CWA.

24 85. Plaintiff is informed, believes, and thereon alleges that Defendant has not
25 developed or implemented a monitoring, reporting and sampling program for the l
26 Facility.

27 ///

28 ///

VI. CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION

**Discharges of Contaminated Storm Water in
Violation of the Industrial Permit's Discharge Prohibitions and
Receiving Water Limitations and the Clean Water Act
(Violations of 33 U.S.C. §§ 1311(a), 1342)**

86. Plaintiff incorporates the preceding paragraphs as if fully set forth herein.

87. Plaintiff is informed, believes, and thereon alleges that as a result of the operations at the A & B Truck Facility, during every significant rain event, storm water containing pollutants harmful to fish, plant, bird life, and human health is discharged from the Facility to the Receiving Waters.

88. Plaintiff is informed, believes, and thereon alleges that Defendant's discharges of contaminated storm water have caused and continue to cause pollution, contamination, and/or nuisance to the waters of the United States in violation of Discharge Prohibition A(2) of the Industrial Permit and Section VI.C of the New Industrial Permit.

89. Plaintiff is informed, believes, and thereon alleges that these discharges of contaminated storm water have adversely affected, and continue to adversely affect, human health and the environment in violation of Receiving Water Limitation C(1) of the Industrial Permit and Section VI.B. of the New Industrial Permit.

90. Plaintiff is informed, believes, and thereon alleges that these discharges of contaminated storm water have caused or contributed to and continue to cause or contribute to an exceedance of Water Quality Standards in violation of Receiving Water Limitation C(2) of the Industrial Permit and VI.A. of the New Industrial Permit.

91. Plaintiff is informed, believes, and thereon alleges that from at least February 24, 2011 through the present, Defendant has discharged, and continues to discharge, contaminated storm water from the A & B Truck Facility to Receiving Waters in violation of the prohibitions of the Industrial Permit. Thus, Defendant is liable for civil penalties for at 1,825 violations of the Industrial Permit and the CWA.

1 92. Plaintiff is informed, believes, and thereon alleges that Defendant's
2 violations of the Industrial Permit and the CWA are ongoing.

3 93. Defendant will continue to be in violation of the Industrial Permit
4 requirements each day the Facility discharges contaminated storm water in violation of
5 Industrial Permit prohibitions.

6 94. Every day that Defendant has discharged and/or continues to discharge
7 polluted storm water from the Facility in violation of the Industrial Permit is a separate
8 and distinct violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

9 95. By committing the acts and omissions alleged above, Defendant is subject
10 to an assessment of civil penalties for each and every violation of the CWA occurring
11 from February 24, 2011 to the present pursuant to Sections 309(d) and 505 of the CWA,
12 33 U.S.C. §§ 1319(d) and 1365, and the Adjustment of Civil Monetary Penalties for
13 Inflation, 40 C.F.R. §12.4.

14 96. An action for injunctive relief under the CWA is authorized by 33 U.S.C.
15 § 1365(a). Continuing commission of the acts and omissions alleged above would
16 irreparably harm Plaintiff and the citizens of the State of California, for which harm
17 they have no plain, speedy, or adequate remedy at law.

18 Wherefore, Plaintiff prays judgment against Defendant as set forth hereafter.

19 **SECOND CAUSE OF ACTION**

20 **Failure to Develop and/or Implement BMPs that Achieve Compliance with Best**
21 **Available Technology Economically Achievable and Best Conventional Pollutant**
22 **Control Technology In Violation of the Industrial Permit and the Clean Water Act**
(Violations of 33 U.S.C. §§1311, 1342)

23 97. Plaintiff incorporated the preceding paragraphs as if fully set forth herein.

24 98. Plaintiff is informed, believes, and thereon alleges that Defendant has
25 failed to develop and/or implement BMPs that achieve compliance with BAT/BCT
26 requirements of the Industrial Permit and the CWA.

27 99. Sampling of the Facility's storm water discharges as well as Plaintiff's
28 observations and local agency inspections of the A & B Truck Facility demonstrate that

1 Defendant has not developed and has not implemented BMPs that meet the standards of
2 BAT/BCT. Thus, Defendant is in violation of Effluent Limitations of the Industrial
3 Permit and New Industrial Permit.

4 100. Plaintiff is informed, believes, and thereon alleges that Defendant has been
5 in daily and continuous violation of the BAT/BCT requirements of the Industrial Permit
6 and the CWA every day since at least February 24, 2011, and of the BAT/BCT
7 requirements of the New Industrial Permit since July 1, 2015.

8 101. Plaintiff is informed, believes, and thereon alleges that Defendant's
9 violations of the Effluent Limitations and the CWA are ongoing.

10 102. Defendant will continue to be in violation every day the A & B Truck
11 Facility operates without adequately developing and/or implementing BMPs that
12 achieve BAT/BCT to prevent or reduce pollutants associated with industrial activity in
13 storm water discharges at the Facility.

14 103. Every day that Defendant operates the Facility without adequately
15 developing and/or implementing BMPs that achieve BAT/BCT in violation of the
16 Industrial Permit or New Industrial Permit is a separate and distinct violation of Section
17 301(a) of the CWA, 33 U.S.C. § 1311(a).

18 104. By committing the acts and omissions alleged above, Defendant is subject
19 to an assessment of civil penalties for each and every violation of the CWA occurring
20 from February 24, 2011 to the present pursuant to Sections 309(d) and 505 of the CWA,
21 33 U.S.C. §§ 1319(d) and 1365, and the Adjustment of Civil Monetary Penalties for
22 Inflation, 40 C.F.R. §12.4.

23 105. An action for injunctive relief under the CWA is authorized by 33 U.S.C.
24 § 1365(a). Continuing commission of the acts and omissions alleged above would
25 irreparably harm Plaintiff and the citizens of the State of California, for which harm
26 they have no plain, speedy, or adequate remedy at law.

27 Wherefore, Plaintiff prays judgment against Defendant as set forth hereafter.

28 /././

THIRD CAUSE OF ACTION

**Failure to Develop and/or Implement an Adequate
Storm Water Pollution Prevention Plan
in Violation of the Industrial Permit and Clean Water Act
(Violations of 33 U.S.C. §§ 1311, 1342)**

106. Plaintiff incorporates the preceding paragraphs as if fully set forth herein.

107. Plaintiff is informed, believes, and thereon alleges that Defendant has failed to develop and/or implement an adequate SWPPP for the A & B Truck Facility that meets the requirements set out in Section A and Provision E of the Industrial Permit and Section X of the New Industrial Permit.

108. Defendant has been in violation of the SWPPP requirements every day since at least February 24, 2011.

109. Defendant's violations of the Industrial Permit, New Industrial Permit and the CWA are ongoing.

110. Defendant will continue to be in violation of the SWPPP requirements every day the Facility operates with an inadequately developed and/or implemented SWPPP for the A & B Truck Facility.

111. Each day that Defendant operates the A & B Truck Facility without developing and/or implementing an adequate SWPPP is a separate and distinct violation of Section 301(a) of the CWA 33 U.S.C. §1311(a).

112. By committing the acts and omissions alleged above, Defendant is subject to an assessment of civil penalties for each and every violation of the CWA occurring from February 24, 2011 to the present pursuant to Sections 309(d) and 505 of the CWA, 33 U.S.C. §§ 1319(d) and 1365, and the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. §12.4.

113. An action for injunctive relief under the CWA is authorized by 33 U.S.C. § 1365(a). Continuing commission of the acts and omissions alleged above would irreparably harm Plaintiff and the citizens of the State of California, for which harm they have no plain, speedy, or adequate remedy at law.

Wherefore, Plaintiff prays judgment against Defendant as set forth hereafter.

FOURTH CAUSE OF ACTION

**Failure to Conduct Required Rain Event Sampling in
Violation of the Industrial Permit**

114. Plaintiff incorporates the preceding paragraphs as if fully set forth herein.

115. Plaintiff is informed, believe, and thereon allege that Defendant is in violation of Industrial Permit Section B(7) and B(5) by failing to collect at least two samples of storm water runoff, including one set of samples during the first storm event of the wet season.

116. Plaintiff is informed, believes, and thereon alleges that Defendant failed to collect two samples during every wet season since February 24, 2011.

117. Information available to Plaintiff indicates that there were numerous qualifying rain events during the 2011, 2012, 2013, 2014, and 2015 wet seasons.

118. Defendant has been in violation of the Industrial Permit and the CWA for each day the A & B Truck Facility operates without sampling as required by the Industrial Permit.

119. By committing the acts and omissions alleged above, Defendant is subject to an assessment of civil penalties for each and every violation of the CWA occurring from February 24, 2011 to the presents, pursuant to Sections 309(d) and 505 of the CWA, 33 U.S.C. §§1319(d) and 1365, and the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. §12.4.

120. An action for injunctive relief under the CWA is authorized by 33 U.S.C. §1365(a). Continuing commission of the omissions alleged above would irreparably harm Plaintiff and the citizens of the State of California, for which harm they have no plain, speedy, or adequate remedy at law.

Wherefore, Plaintiff prays judgment against Defendant as set forth hereafter.

VII. RELIEF REQUESTED

121. Wherefore, Plaintiff respectfully requests that this Court grant the following relief:

1 a. A Court order declaring Defendant to have violated and to be in
2 violation of Section 301(a) of the CWA 33 U.S.C. § 1311(a) for its unlawful discharges
3 of pollutants from the A & B Truck Facility in violation of the substantive and
4 procedural requirements of the Industrial Permit, and as of July 1, 2015, the New
5 Industrial Permit;

6 b. A Court order enjoining the Defendant from violating the substantive
7 and procedural requirements of the New Industrial Permit;

8 c. A Court order assessing civil monetary penalties of \$37,500 per day
9 per violation for each violation of the CWA at the Quality Facility occurring since
10 February 24, 2011, as permitted by 33 U.S.C. § 1319(d) and Adjustment of Civil
11 Monetary Penalties for Inflation, 40 C.F.R. § 19.4;

12 d. A Court order requiring Defendant to take appropriate actions to
13 restore the quality of waters impaired by its activities;

14 e. A Court order awarding Plaintiffs their reasonable costs of suit,
15 including attorney, witness, expert, and consultant fees, as permitted by Section 505(d)
16 of the Clean Water Act, 33 U.S.C. § 1365(d);

17 f. Any other relief as this Court may deem appropriate.

18 Dated: April 19, 2016

Respectfully submitted,

COAST LAW GROUP LLP

By: s/Livia Borak

LIVIA BORAK

Attorneys for Plaintiff

COASTAL ENVIRONMENTAL

RIGHTS FOUNDATION

E-mail: livia@coastlawgroup.com

EXHIBIT A

60 Day Notice Letter



1140 S. Coast Highway 101
Encinitas, CA 92024

Tel 760-942-8505
Fax 760-942-8515
www.coastlawgroup.com

February 24, 2016

Andrew Bejiman Stannard
Agent for Service of Process
Andy's Auto Wrecking, Incorporated
4019 S. Mission Road
Fallbrook California 92028

VIA CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Andrew B. Stannard
Owner and Legally Responsible Person
A & B Truck Recycling
2863 Commercial Street
San Diego California 92113

**Re: Clean Water Act Notice of Intent to Sue/60-Day Notice Letter
A & B Truck Recycling Violations of General Industrial Permit**

Dear Mr. Stannard:

Please accept this letter on behalf of the Coastal Environmental Rights Foundation (CERF) regarding Andy's Auto Wrecking Incorporated, Inc (doing business as A & B Truck Recycling) violations of the State Water Resources Control Board Water Quality Order No. 97-03-DWQ, Natural Pollutant Discharge Elimination System (NPDES), General Permit No. CAS000001, and Waste Discharge Requirements for Discharges of Storm Water Associated With Industrial Activities Excluding Construction Activities (General Industrial Permit).¹ This letter constitutes CERF's notice of intent to sue for violations of the Clean Water Act and General Industrial Permit for the A & B Truck Recycling facility located at 2863 Commercial Street, San Diego CA, 92113 ("Facility" or "A & B Truck"), as set forth in more detail below.

Section 505(b) of the Clean Water Act requires that sixty (60) days prior to the initiation of a citizen's civil lawsuit in Federal District Court under Section 505(a) of the Act, a citizen must give notice of the violations and the intent to sue to the violator, the Administrator of the U.S. Environmental Protection Agency, the Regional Administrator of the U.S. Environmental Protection Agency for the region in which the violations have occurred, the U.S. Attorney General, and the Chief Administrative Officer for the State in which the violations have occurred (33 U.S.C. § 1365(b)(1)(A)). This letter provides notice of A & B Truck's Clean Water Act violations and CERF's intent to sue.

I. Coastal Environmental Rights Foundation (CERF)

CERF is a non-profit public benefit corporation organized under the laws of the State of California with its main office in Encinitas, CA. CERF is dedicated to the preservation,

¹ On April 1, 2014, the State Water Resources Control Board adopted Order No. 2014-0057-DWQ, which amends the Industrial General Permit ("New Industrial Permit"). These amendments became effective on July 1, 2015. All references to the General Industrial Permit are to the Permit as it existed at the time of the violations noted herein.

Notice of Intent to Sue: Clean Water Act
A & B Truck Recycling
February 24, 2016
Page 2

protection, and defense of the environment, the wildlife, and the natural resources of the California Coast. Members of CERF use and enjoy the waters into which pollutants from A & B Truck's ongoing illegal activities are discharged, namely Chollas Creek, San Diego Bay, and eventually the Pacific Ocean. The public and members of CERF use Chollas Creek and San Diego Bay to fish, boat, kayak, surf, swim, scuba dive, birdwatch, view wildlife, and to engage in scientific studies. The discharge of pollutants by the A&B Truck Facility affects and impairs each of these uses. Thus, the interests of CERF's members have been, are being, and will continue to be adversely affected by the A & B Truck Facility Owners and/or Operators' (collectively referred to as "A & B Truck Owners") failure to comply with the Clean Water Act and the General Industrial Permit.

II. Storm Water Pollution and the General Industrial Permit

A. Duty to Comply

Under the Clean Water Act, the discharge of any pollutant to a water of the United States is unlawful except in compliance with certain provisions of the Clean Water Act. (See 33 U.S.C. § 1311 (a)). In California, any person who discharges storm water associated with industrial activity must comply with the terms of the General Industrial Permit in order to lawfully discharge. A & B Truck enrolled as a discharger subject to the General Industrial Permit on July 19, 1993. A & B enrolled under the New Industrial Permit on May 8, 2015, WDID Number 9 371010097.

The A & B Truck Facility is a 1.5-acre site with three buildings and numerous pathways for pollutant exposure to storm water. (SWPPP, p. 4). Significant materials onsite include salvaged vehicles, engines, transmissions, rear ends, radiators, oil filters, batteries, waste oils, antifreeze, drained and new fuels, freon, tires, lead weights, mercury switches, wheels and rims, wash water, crushed vehicles, delivery trucks and forklifts. (SWPPP, p. 5). The A & B Truck Facility handles, collects, drains, and sorts various materials. (SWPPP, p. 6). "Recyclable material activities include: draining waste automotive fluids, dismantling engines, transmissions, rear ends, radiators, batteries and other parts such as torque converters, tires and wheels, fenders hoods, trunk lids, mercury switches, air bags and high value metal parts such as aluminum parts or copper wires." (*Id.*).

Pursuant to Section C(1) of the General Industrial Permit, a facility operator must comply with all conditions of the General Industrial Permit. (See New Industrial Permit, §I.A.8. [dischargers must "comply with all requirements, provisions, limitations, and prohibitions in this General Permit."]). Failure to comply with the General Industrial Permit is a Clean Water Act violation. (General Industrial Permit, § C.1; New Industrial Permit §XXI.A.). Any non-compliance further exposes an owner or operator to enforcement action and/or removal from General Permit coverage. (*Id.*). As an enrollee, A & B Truck has a duty to comply with the General Industrial Permit and New Industrial Permit and is subject to all of the provisions therein.

B. Failure to Monitor

The A & B Truck Owners have failed to sample as required under the New Industrial Permit, which became effective July 1, 2015. The A & B Truck Owners have failed to meet monitoring requirements for the first half of the 2015-2016 wet season, though there have been numerous qualifying storm events since July 1st. The New Industrial Permit requires dischargers